

By: Smithee

H.B. No. 3

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the operation and name of the Texas Windstorm Insurance
3 Association and to the resolution of certain disputes concerning
4 claims made to that association; providing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 83.002, Insurance Code, is amended by
7 adding Subsection (c) to read as follows:

8 (c) This chapter also applies to:

9 (1) a person appointed as a qualified inspector under
10 Section 2210.254 or 2210.255; and

11 (2) a person acting as a qualified inspector under
12 Section 2210.254 or 2210.255 without being appointed as a qualified
13 inspector under either of those sections.

14 SECTION 2. Section 541.152, Insurance Code, is amended by
15 amending Subsection (b) and adding Subsection (c) to read as
16 follows:

17 (b) Except as provided by Subsection (c), on [On] a finding
18 by the trier of fact that the defendant knowingly committed the act
19 complained of, the trier of fact may award an amount not to exceed
20 three times the amount of actual damages.

21 (c) Subsection (b) does not apply to an action under this
22 subchapter brought against the Texas Windstorm Insurance
23 Association by a person who is insured under Chapter 2210.

24 SECTION 3. The heading to Chapter 2210, Insurance Code, is

1 amended to read as follows:

2 CHAPTER 2210. TEXAS COASTAL [~~WINDSTORM~~] INSURANCE PLAN
3 [~~ASSOCIATION~~]

4 SECTION 4. Section 2210.002, Insurance Code, is amended to
5 read as follows:

6 Sec. 2210.002. SHORT TITLE; SUNSET PROVISION. (a) This
7 chapter may be cited as the Texas Coastal [~~Windstorm~~] Insurance
8 Plan [~~Association~~] Act. A reference to the Texas Windstorm
9 Insurance Act means this chapter.

10 (b) The association is subject to review under Chapter 325,
11 Government Code (Texas Sunset Act), but is not abolished under that
12 chapter. The association shall be reviewed during the period in
13 which state agencies abolished in 2013 [~~2015~~] are reviewed. The
14 association shall pay the costs incurred by the Sunset Advisory
15 Commission in performing the review of the association under this
16 subsection. The Sunset Advisory Commission shall determine the
17 costs of the review performed under this subsection, and the
18 association shall pay the amount of those costs promptly on receipt
19 of a statement from the Sunset Advisory Commission regarding those
20 costs. This subsection expires September 1, 2013 [~~2015~~].

21 SECTION 5. Section 2210.003(1), Insurance Code, is amended
22 to read as follows:

23 (1) "Association" means the Texas Coastal [~~Windstorm~~]
24 Insurance Plan Association.

25 SECTION 6. Section 2210.003, Insurance Code, is amended by
26 adding Subdivision (3-b) to read as follows:

27 (3-b) "Catastrophe year" means a calendar year in

1 which an occurrence or a series of occurrences results in insured
2 losses, regardless of when the insured losses are ultimately paid.

3 SECTION 7. Subchapter A, Chapter 2210, Insurance Code, is
4 amended by adding Sections 2210.0081, 2210.010, 2210.012, and
5 2210.013 to read as follows:

6 Sec. 2210.0081. CERTAIN ACTIONS BROUGHT AGAINST
7 ASSOCIATION BY COMMISSIONER. In an action brought by the
8 commissioner against the association under Chapter 441:

9 (1) the association's inability to satisfy obligations
10 under Subchapter M related to the issuance of public securities
11 under this chapter constitutes a condition that makes the
12 association's continuation in business hazardous to the public or
13 to the association's policyholders for the purposes of Section
14 441.052;

15 (2) the time for the association to comply with the
16 requirements of supervision or for the conservator to complete the
17 conservator's duties, as applicable, is limited to three years from
18 the date the commissioner commences the action against the
19 association; and

20 (3) unless the commissioner takes further action
21 against the association under Chapter 441, as a condition of
22 release from supervision, the association must demonstrate to the
23 satisfaction of the commissioner that the association is able to
24 satisfy obligations under Subchapter M related to the issuance of
25 public securities under this chapter.

26 Sec. 2210.010. APPLICABILITY OF CERTAIN OTHER LAW. (a) A
27 person may not bring a private action against the association,

1 including a claim against an agent or representative of the
2 association, under Chapter 541 or 542.

3 (b) Chapter 542 does not apply to the processing and
4 settlement of claims by the association.

5 Sec. 2210.012. STANDARDS OF CONDUCT: BOARD OF DIRECTORS AND
6 EMPLOYEES; REPORT OF CERTAIN FRAUDULENT CONDUCT. (a) A member of
7 the board of directors or an employee of the association may not:

8 (1) accept or solicit any gift, favor, or service that
9 might reasonably tend to influence the member or employee in the
10 discharge of duties related to the operation or business of the
11 association or that the member or employee knows or should know is
12 being offered with the intent to influence the member's or
13 employee's conduct related to the operation or business of the
14 association;

15 (2) accept other employment or engage in a business or
16 professional activity that the member or employee might reasonably
17 expect would require or induce the member or employee to disclose
18 confidential information acquired by reason of the member's or
19 employee's position with the association;

20 (3) accept other employment or compensation that could
21 reasonably be expected to impair the member's or employee's
22 independence of judgment in the performance of the member's or
23 employee's duties related to the operation or business of the
24 association;

25 (4) make personal investments that could reasonably be
26 expected to create a substantial conflict between the member's or
27 employee's private interest and the interest of the association; or

1 (5) intentionally or knowingly solicit, accept, or
2 agree to accept any benefit for having exercised the member's or
3 employee's powers related to the operation or business of the
4 association or having performed, in favor of another, the member's
5 or employee's duties related to the operation or business of the
6 association.

7 (b) An association employee who violates Subsection (a) or a
8 code of conduct established under Section 2210.107(a)(4) is subject
9 to an employment-related sanction, including termination of the
10 employee's employment with the association.

11 (c) A member of the board of directors or an association
12 employee who violates Subsection (a) is subject to any applicable
13 civil or criminal penalty if the violation also constitutes a
14 violation of another statute or rule.

15 (d) A board member, employee of the association, or member
16 of the windstorm insurance legislative oversight board established
17 under Subchapter N who reasonably suspects that a fraudulent
18 insurance act has been or is about to be committed by any board
19 member, employee of the association, or member of the windstorm
20 insurance legislative oversight board established under Subchapter
21 N shall, not later than the 30th day after discovering the conduct,
22 report the conduct and identity of the person engaging in the
23 conduct to the Travis County district attorney or the department.

24 Sec. 2210.013. CERTAIN EMPLOYMENT AND CONTRACTS
25 PROHIBITED. A member of the board of directors or an employee of
26 the association may not appoint or employ, or contract with, the
27 following individuals for the provision of goods or services in

1 connection with the operation or business of the association, if
2 the individual to be appointed or employed, or with whom a contract
3 is to be entered into, is to be directly or indirectly compensated
4 from funds of the association:

5 (1) an individual related to the member or employee
6 within a degree of relationship described by Section 573.002,
7 Government Code; or

8 (2) an individual related to any member of the board of
9 directors or employee of the association within a degree of
10 relationship described by Section 573.002, Government Code.

11 SECTION 8. Section 2210.053, Insurance Code, is amended by
12 adding Subsection (c) to read as follows:

13 (c) The association may not be considered a debtor
14 authorized to file a petition or seek relief in bankruptcy under
15 Title 11, United States Code.

16 SECTION 9. Subchapter B, Chapter 2210, Insurance Code, is
17 amended by adding Section 2210.058 to read as follows:

18 Sec. 2210.058. CLAIMS PRACTICES AUDIT. (a) If the
19 commissioner determines that 100 or more claims have been filed
20 under association policies the bases of which are damage to insured
21 property caused by the same storm, the department shall conduct a
22 random audit of the claim files of those claims to:

23 (1) determine whether the association is adequately
24 and properly documenting claims decisions in each claim file; and

25 (2) ensure that each claim is being handled
26 appropriately, including being handled in accordance with the terms
27 of the policy under which the claim is filed.

1 (b) The department shall conduct an audit required under
2 this section as soon as possible after the filing of the 100th claim
3 described by Subsection (a) to ensure the quality of the process
4 with which the association is handling claims described by
5 Subsection (a).

6 (c) If, following an audit conducted under this section, the
7 commissioner determines that the association is not adequately and
8 properly documenting claims decisions or that claims described by
9 Subsection (a) are not otherwise being handled appropriately, the
10 commissioner shall:

11 (1) notify the board of directors of that
12 determination; and

13 (2) identify the manner in which the association
14 should correct any deficiencies identified by the commissioner.

15 SECTION 10. Section 2210.071(a), Insurance Code, is amended
16 to read as follows:

17 (a) If, in a catastrophe year, an occurrence or series of
18 occurrences in a catastrophe area results in insured losses and
19 operating expenses of the association in excess of premium and
20 other revenue of the association, the excess losses and operating
21 expenses shall be paid as provided by this subchapter.

22 SECTION 11. Section 2210.072, Insurance Code, is amended by
23 amending Subsections (a), (b), and (c) and adding Subsection (b-1)
24 to read as follows:

25 (a) Losses not paid under Section 2210.071 shall be paid as
26 provided by this section from the proceeds from Class 1 public
27 securities authorized to be issued in accordance with Subchapter M

1 before, on, or after the date of any occurrence or series of
2 occurrences that results in insured losses. Public securities
3 issued under this section must be repaid within a period not to
4 exceed 10 years, and may be repaid sooner if the board of directors
5 elects to do so and the commissioner approves.

6 (b) Public securities described by Subsection (a) that are
7 issued before an occurrence or series of occurrences that results
8 in incurred losses may be issued if the board of directors
9 determines, before the date of any occurrence, that the amount
10 available from premium and other revenue, in combination with the
11 amounts available from the catastrophe reserve trust fund, may be
12 insufficient to pay insured losses.

13 (b-1) Public securities described by Subsection (a) shall
14 be issued as necessary in a principal amount not to exceed \$1
15 billion per catastrophe year, in the aggregate, for securities
16 issued before the occurrence or series of occurrences that results
17 in incurred losses in that year and securities issued on or after
18 the date of that occurrence or series of occurrences.

19 (c) If [~~the losses are paid with~~] public securities are
20 issued as described by this section, the public securities shall be
21 repaid in the manner prescribed by Subchapter M from association
22 premium revenue.

23 SECTION 12. Section 2210.073(b), Insurance Code, is amended
24 to read as follows:

25 (b) Public securities described by Subsection (a) may be
26 issued as necessary in a principal amount not to exceed \$1 billion
27 per catastrophe year. If the losses are paid with public securities

1 described by this section, the public securities shall be repaid in
2 the manner prescribed by Subchapter M.

3 SECTION 13. Section 2210.074(b), Insurance Code, is amended
4 to read as follows:

5 (b) Public securities described by Subsection (a) may be
6 issued as necessary in a principal amount not to exceed \$500 million
7 per catastrophe year. If the losses are paid with public securities
8 described by this section, the public securities shall be repaid in
9 the manner prescribed by Subchapter M through member assessments as
10 provided by this section. The association shall notify each member
11 of the association of the amount of the member's assessment under
12 this section. The proportion of the losses allocable to each
13 insurer under this section shall be determined in the manner used to
14 determine each insurer's participation in the association for the
15 year under Section 2210.052. A member of the association may not
16 recoup an assessment paid under this subsection through a premium
17 surcharge or tax credit.

18 SECTION 14. Section 2210.102, Insurance Code, is amended by
19 adding Subsection (i) to read as follows:

20 (i) Notwithstanding Subsection (f), for a vacancy occurring
21 in a position under Subsection (b), the commissioner may appoint,
22 for the lesser of 120 days or until the vacancy is filled, a person
23 who has demonstrated knowledge in insurance principles. This
24 subsection does not apply to a vacancy due to the expiration of a
25 term occurring under Section 2210.103. This subsection expires
26 December 31, 2012, and any appointment in effect on that date is
27 continued until the expiration of the term of the appointment.

1 SECTION 15. Section 2210.104, Insurance Code, is amended to
2 read as follows:

3 Sec. 2210.104. OFFICERS AND MANAGERIAL EMPLOYEES; SALARIES
4 AND BONUSES. (a) The board of directors shall elect from the
5 board's membership an executive committee consisting of a presiding
6 officer, assistant presiding officer, and secretary-treasurer.

7 (b) The association shall post on the association's
8 Internet website the salary of each association employee who serves
9 in a managerial capacity and any bonuses paid to those association
10 employees.

11 SECTION 16. Section 2210.105, Insurance Code, is amended by
12 amending Subsections (a) and (b) and adding Subsections (b-1), (e),
13 and (f) to read as follows:

14 (a) Except for an emergency meeting, the association shall:
15 (1) notify the department not later than the 11th day
16 before the date of a meeting of the board of directors or of the
17 members of the association; and

18 (2) not later than the seventh day before the date of a
19 meeting of the board of directors, post notice of the meeting on the
20 association's Internet website and the department's Internet
21 website.

22 (b) Except for a closed meeting authorized by Subchapter D,
23 Chapter 551, Government Code, a meeting of the board of directors or
24 of the members of the association is open to [+

25 [~~1~~] ~~the commissioner or the commissioner's designated~~
26 ~~representative; and~~

27 [~~2~~] the public.

1 (b-1) A meeting of the board of directors or the members of
2 the association, including a closed meeting authorized by
3 Subchapter D, Chapter 551, Government Code, is open to the
4 commissioner or the commissioner's designated representative. The
5 commissioner or the commissioner's designated representative shall
6 maintain the confidentiality of, and may not disclose the content
7 of, any confidential information discussed in a closed meeting
8 authorized by Subchapter D, Chapter 551, Government Code.

9 (e) The association shall:

10 (1) broadcast live on the association's Internet
11 website all meetings of the board of directors, other than closed
12 meetings; and

13 (2) maintain on the association's Internet website an
14 archive of meetings of the board of directors.

15 (f) A recording of a meeting must be maintained in the
16 archive required under Subsection (e) through and including the
17 second anniversary of the meeting.

18 SECTION 17. Section 2210.107, Insurance Code, is amended to
19 read as follows:

20 Sec. 2210.107. PRIMARY BOARD OBJECTIVES; REPORT. (a) The
21 primary objectives of the board of directors are to ensure that the
22 board and the association:

23 (1) operate [~~operates~~] in accordance with this
24 chapter, the plan of operation, and commissioner rules;

25 (2) comply [~~complies~~] with sound insurance
26 principles; [~~and~~]

27 (3) meet [~~meets~~] all standards imposed under this

1 chapter;

2 (4) establish a code of conduct and performance
3 standards for association employees and persons with which the
4 association contracts; and

5 (5) establish, and adhere to terms of, an annual
6 evaluation of association management necessary to achieve the
7 statutory purpose, board objectives, and any performance or
8 enterprise risk management objectives established by the board.

9 (b) Not later than June 1 of each year, the association
10 shall submit to the commissioner, the legislative oversight board
11 established under Subchapter N, the governor, the lieutenant
12 governor, and the speaker of the house of representatives a report
13 evaluating the extent to which the board met the objectives
14 described by Subsection (a) in the 12-month period immediately
15 preceding the date of the report.

16 SECTION 18. Subchapter C, Chapter 2210, Insurance Code, is
17 amended by adding Section 2210.108 to read as follows:

18 Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS. (a) Except
19 as specifically provided by this chapter or another law, the
20 association is subject to Chapters 551 and 552, Government Code.

21 (b) A settlement agreement to which the association is a
22 party:

23 (1) is public information and is not exempted from
24 required disclosure under Chapter 552, Government Code; and

25 (2) if applicable, must contain the name of any
26 attorney or adjuster involved with the claim that is the basis of
27 the settlement.

1 (c) Subsection (b) may not be construed to limit or
2 otherwise restrict the categories of information that are public
3 information under Section 552.022, Government Code.

4 SECTION 19. Section 2210.152, Insurance Code, is amended by
5 adding Subsection (c) to read as follows:

6 (c) The plan of operation shall require the association to
7 use the claim settlement guidelines published by the commissioner
8 under Section 2210.577(f) in evaluating the extent to which a loss
9 to insured property is incurred as a result of wind, waves, tidal
10 surges, rising waters not caused by waves or surges, or wind-driven
11 rain associated with a storm.

12 SECTION 20. Section 2210.202, Insurance Code, is amended to
13 read as follows:

14 Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person who
15 has an insurable interest in insurable property may apply to the
16 association for insurance coverage provided under the plan of
17 operation and an inspection of the property, subject to any rules
18 established by the board of directors and approved by the
19 commissioner. The association shall make insurance available to
20 each applicant in the catastrophe area whose property is insurable
21 property but who, after diligent efforts, is unable to obtain
22 property insurance through the voluntary market, as evidenced by
23 one declination from an insurer authorized to engage in the
24 business of, and writing, property insurance providing windstorm
25 and hail coverage in the first tier coastal counties. For purposes
26 of this section, "declination" has the meaning assigned by the plan
27 of operation and shall include a refusal to offer coverage for the

1 perils of windstorm and hail and the inability to obtain
2 substantially equivalent insurance coverage for the perils of
3 windstorm and hail. Notwithstanding Section 2210.203(c), evidence
4 of one declination every three calendar years is also required with
5 an application for renewal of an association policy.

6 (b) A property and casualty agent must submit an application
7 for initial ~~[the]~~ insurance coverage on behalf of the applicant on
8 forms prescribed by the association. A person insured under this
9 chapter may submit an application for renewal coverage directly to
10 the association on forms prescribed by the association. An ~~[The]~~
11 application for initial or renewal coverage must contain:

12 (1) a statement as to whether the applicant has
13 submitted or will submit the premium in full from personal funds or,
14 if not, to whom a balance is or will be due; and

15 (2) ~~[. Each application for initial or renewal~~
16 ~~coverage must also contain]~~ a statement that the agent acting on
17 behalf of the applicant possesses proof of the declination
18 described by Subsection (a) and proof of flood insurance coverage
19 or unavailability of that coverage as described by Section
20 2210.203(a-1), regardless of whether the agent or the applicant
21 submits the application for coverage.

22 SECTION 21. Section 2210.203, Insurance Code, is amended by
23 amending Subsection (a) and adding Subsection (d) to read as
24 follows:

25 (a) If the association determines that the property for
26 which an application for initial insurance coverage is made is
27 insurable property, the association, on payment of the premium,

1 shall direct the issuance of an insurance policy as provided by the
2 plan of operation.

3 (d) The commissioner shall adopt rules governing the rate of
4 agent commissions on policies renewed under Subsection (c). Rules
5 adopted under this subsection must require that commission rates be
6 reasonable and not excessive, based on the time required of, and the
7 nature of work to be performed by, an agent.

8 SECTION 22. Sections 2210.204(d) and (e), Insurance Code,
9 are amended to read as follows:

10 (d) If an insured requests cancellation of the insurance
11 coverage, the association shall refund the unearned premium, less
12 any minimum retained premium set forth in the plan of operation,
13 payable to the insured and the holder of an unpaid balance. The
14 property and casualty agent who received a commission as the result
15 of the issuance of an association policy providing the canceled
16 coverage [~~submitted the application~~] shall refund the agent's
17 commission on any unearned premium in the same manner.

18 (e) For cancellation of insurance coverage under this
19 section, the minimum retained premium in the plan of operation must
20 be for a period of not less than 90 [~~180~~] days, except for events
21 specified in the plan of operation that reflect a significant
22 change in the exposure or the policyholder concerning the insured
23 property, including:

24 (1) the purchase of similar coverage in the voluntary
25 market;

26 (2) sale of the property to an unrelated party;

27 (3) death of the policyholder; or

1 (4) total loss of the property.

2 SECTION 23. Subchapter E, Chapter 2210, Insurance Code, is
3 amended by adding Sections 2210.205 and 2210.210 to read as
4 follows:

5 Sec. 2210.205. REQUIRED POLICY PROVISIONS: DEADLINE FOR
6 FILING CLAIM; NOTICE CONCERNING RESOLUTION OF CERTAIN DISPUTES.

7 (a) A windstorm and hail insurance policy issued by the association
8 must:

9 (1) require an insured to file a claim under the policy
10 not later than the first anniversary of the date on which the damage
11 to property that is the basis of the claim occurs; and

12 (2) contain, in boldface type, a conspicuous notice
13 concerning the resolution of disputes under the policy, including:

14 (A) the processes and deadlines for appraisal
15 under Section 2210.575 and independent coverage review under
16 Section 2210.576; and

17 (B) the necessity of complying with the
18 requirements of Subchapter L-1 to seek administrative or judicial
19 relief.

20 (b) The commissioner, on a showing of good cause by a person
21 insured under this chapter, may extend the one-year period
22 described by Subsection (a)(1) for a period not to exceed 180 days.

23 Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED.

24 The association may not issue coverage for the following
25 structures, regardless of whether the structure is otherwise
26 insurable property under this chapter:

27 (1) a wind turbine;

1 (2) a structure used primarily as a casino or other
2 gambling establishment;

3 (3) a structure used as a sexually oriented business,
4 as defined by Section 243.002, Local Government Code; or

5 (4) a structure in which, or in any portion of which,
6 an establishment is located that is used primarily for the
7 operation of video lottery machines, eight-liners, or other
8 gambling devices, regardless of whether the gambling devices are
9 regulated under state law.

10 SECTION 24. Section 2210.254, Insurance Code, is amended by
11 adding Subsection (e) to read as follows:

12 (e) The department may establish an annual renewal period
13 for persons appointed as qualified inspectors.

14 SECTION 25. Subchapter F, Chapter 2210, Insurance Code, is
15 amended by adding Section 2210.2551 to read as follows:

16 Sec. 2210.2551. EXCLUSIVE ENFORCEMENT AUTHORITY; RULES.

17 (a) The department has exclusive authority over all matters
18 relating to the appointment and oversight of qualified inspectors
19 for purposes of this chapter.

20 (b) The commissioner by rule shall establish criteria to
21 ensure that a person seeking appointment as a qualified inspector
22 under this subchapter, including an engineer seeking appointment
23 under Section 2210.255, possesses the knowledge, understanding,
24 and professional competence to perform windstorm inspections under
25 this chapter and to comply with other requirements of this chapter.

26 (c) Subsection (b) applies only to a determination
27 concerning the appointment of a qualified inspector under this

1 chapter. The exclusive jurisdiction of the department under this
2 section does not apply to the practice of engineering as defined by
3 Section 1001.003, Occupations Code, or to a license issued,
4 qualification required, determination made, order issued, judgment
5 rendered, or other action of a board operating under Chapter 1001,
6 Occupations Code. In the event of conflict, the authority of that
7 board prevails with regard to the practice of engineering.

8 SECTION 26. The heading to Section 2210.256, Insurance
9 Code, is amended to read as follows:

10 Sec. 2210.256. DISCIPLINARY PROCEEDINGS REGARDING
11 APPOINTED INSPECTORS AND CERTAIN OTHER PERSONS.

12 SECTION 27. Section 2210.256, Insurance Code, is amended by
13 adding Subsection (a-1) to read as follows:

14 (a-1) In addition to any other action authorized under this
15 section, the commissioner ex parte may enter an emergency cease and
16 desist order under Chapter 83 against a qualified inspector, or a
17 person acting as a qualified inspector, if:

18 (1) the commissioner believes that:

19 (A) the qualified inspector has:

20 (i) through submitting or failing to submit
21 to the department sealed plans, designs, calculations, or other
22 substantiating information, failed to demonstrate that a structure
23 or a portion of a structure subject to inspection meets the
24 requirements of this chapter and department rules; or

25 (ii) refused to comply with requirements
26 imposed under this chapter or department rules; or

27 (B) the person acting as a qualified inspector is

1 acting without appointment as a qualified inspector under Section
2 2210.254 or 2210.255; and

3 (2) the commissioner determines that the conduct
4 described by Subdivision (1) is fraudulent or hazardous or creates
5 an immediate danger to the public.

6 SECTION 28. Subchapter F, Chapter 2210, Insurance Code, is
7 amended by adding Section 2210.260 to read as follows:

8 Sec. 2210.260. ALTERNATIVE ELIGIBILITY FOR COVERAGE. (a)
9 On and after January 1, 2012, a person who has an insurable interest
10 in a residential structure may obtain insurance coverage through
11 the association for that structure without obtaining a certificate
12 of compliance under Section 2210.251(g) in accordance with this
13 section and rules adopted by the commissioner.

14 (b) The department may issue an alternative certification
15 for a residential structure if the person who has an insurable
16 interest in the structure demonstrates that at least one qualifying
17 structural building component of the structure has been:

18 (1) inspected by a department inspector or by a
19 qualified inspector; and

20 (2) determined to be in compliance with applicable
21 building code standards, as set forth in the plan of operation.

22 (c) The commissioner shall adopt reasonable and necessary
23 rules to implement this section. The rules adopted under this
24 section must establish which structural building components are
25 considered qualifying structural building components for the
26 purposes of Subsection (b), taking into consideration those items
27 that are most probable to generate losses for the association's

1 policyholders and the cost to upgrade those items.

2 (d) Except as provided in Section 2210.251(f), a person who
3 has an insurable interest in a residential structure that is
4 insured by the association as of January 1, 2012, but for which the
5 person has not obtained a certificate of compliance under Section
6 2210.251(g), must obtain an alternative certification under this
7 section before the association, on or after January 1, 2013, may
8 renew coverage for the structure.

9 (e) Each residential structure for which a person obtains an
10 alternative certification under this section must comply with:

11 (1) the requirements of this chapter, including
12 Section 2210.258; and

13 (2) the association's underwriting requirements,
14 including maintaining the structure in an insurable condition and
15 paying premiums in the manner required by the association.

16 (f) The association shall develop and implement an
17 actuarially sound rate, credit, or surcharge that reflects the
18 risks presented by structures with reference to which alternative
19 certifications have been obtained under this section. A rate,
20 credit, or surcharge under this subsection may vary based on the
21 number of qualifying structural building components included in a
22 structure with reference to which an alternative certification is
23 obtained under this section.

24 SECTION 29. Section 2210.453, Insurance Code, is amended by
25 adding Subsections (c) and (d) to read as follows:

26 (c) If the association does not purchase reinsurance as
27 authorized by this section, the board, not later than June 1 of each

1 year, shall submit to the commissioner, the legislative oversight
2 board established under Subchapter N, the governor, the lieutenant
3 governor, and the speaker of the house of representatives a report
4 containing an actuarial plan for paying losses in the event of a
5 catastrophe with estimated damages of \$2.5 billion or more. The
6 report required by this subsection must:

7 (1) document and denominate the association's
8 resources available to pay claims, including cash or other highly
9 liquid assets, assessments that the association is projected to
10 impose, pre-event and post-event bonding capacity, and
11 private-sector recognized risk-transfer mechanisms, including
12 catastrophe bonds and reinsurance;

13 (2) include an independent, third-party appraisal of
14 the likelihood of an assessment, the maximum potential size of the
15 assessment, and an estimate of the probability that the assessment
16 would not be adequate to meet the association's needs; and

17 (3) include an analysis of financing alternatives to
18 assessments that includes the costs of borrowing and the
19 consequences that additional purchase of reinsurance, catastrophe
20 bonds, or other private-sector recognized risk-transfer
21 instruments would have in reducing the size or potential of
22 assessments.

23 (d) A person who prepares a report required by Subsection
24 (c) may not contract to provide any other service to the
25 association, except for the preparation of similar reports, before
26 the third anniversary of the date the last report prepared by the
27 person under that subsection is submitted.

1 SECTION 30. Subchapter J, Chapter 2210, Insurance Code, is
2 amended by adding Section 2210.455 to read as follows:

3 Sec. 2210.455. CATASTROPHE PLAN. (a) Not later than June 1
4 of each year, the board shall submit to the commissioner, the
5 legislative oversight board established under Subchapter N, the
6 governor, the lieutenant governor, and the speaker of the house of
7 representatives a catastrophe plan covering the period beginning on
8 the date the plan is submitted and ending on the following May 31.

9 (b) The catastrophe plan must:

10 (1) describe the manner in which the association will,
11 during the period covered by the plan, evaluate losses and process
12 claims after the following windstorms affecting an area of maximum
13 exposure to the association:

14 (A) a windstorm with a four percent chance of
15 occurring during the period covered by the plan;

16 (B) a windstorm with a two percent chance of
17 occurring during the period covered by the plan; and

18 (C) a windstorm with a one percent chance of
19 occurring during the period covered by the plan; and

20 (2) include, if the association does not purchase
21 reinsurance under Section 2210.453 for the period covered by the
22 plan, an actuarial plan for paying losses in the event of a
23 catastrophe with estimated damages of \$2.5 billion or more.

24 (c) The catastrophe plan must include a description of how
25 losses under association policies will be paid, and how claims
26 under association policies will be administered and adjusted,
27 during the period covered by the plan.

1 SECTION 31. Sections 2210.551(a) and (b), Insurance Code,
2 are amended to read as follows:

3 (a) This section:

4 (1) does not apply to a person who is required to
5 resolve a dispute under Subchapter L-1; and

6 (2) applies only to:

7 (A) [~~(1)~~] a person not described by Subdivision
8 (1) who is insured under this chapter or an authorized
9 representative of the person; or

10 (B) [~~(2)~~] an affected insurer.

11 (b) A person or entity described by Subsection (a)(2) [~~(a)~~]
12 who is aggrieved by an act, ruling, or decision of the association
13 may appeal to the commissioner not later than the 30th day after the
14 date of that act, ruling, or decision.

15 SECTION 32. The heading to Section 2210.552, Insurance
16 Code, is amended to read as follows:

17 Sec. 2210.552. [~~CLAIM~~] DISPUTES OTHER THAN CLAIM DISPUTES;
18 VENUE.

19 SECTION 33. Section 2210.552, Insurance Code, is amended by
20 amending Subsection (a) and adding Subsection (e) to read as
21 follows:

22 (a) Except as provided by Sections 2210.007 and 2210.106 and
23 Subchapter L-1, a person insured under this chapter who is
24 aggrieved by an act, ruling, or decision of the association
25 [~~relating to the payment of, the amount of, or the denial of a~~
26 ~~claim~~] may:

27 (1) bring an action against the association[~~7~~

1 ~~including an action under Chapter 541]~~; or

2 (2) appeal the act, ruling, or decision under Section
3 2210.551.

4 (e) A person who brings an action against the association
5 under this section:

6 (1) may recover only the amount of actual damages,
7 plus court costs and reasonable and necessary attorney's fees; and

8 (2) may not recover consequential, punitive, or
9 exemplary damages, including damages under Section 541.152(b) of
10 this code or Section 17.50, Business & Commerce Code.

11 SECTION 34. Subchapter L, Chapter 2210, Insurance Code, is
12 amended by adding Section 2210.553 to read as follows:

13 Sec. 2210.553. LIMITATIONS PERIOD. (a) Notwithstanding
14 any other law, including Section 541.162, a person insured under
15 this chapter who brings an action against the association in the
16 manner described by Section 2210.552(a)(1) must bring the action
17 not later than the second anniversary of the date of the act,
18 ruling, or decision of the association by which the insured is
19 aggrieved.

20 (b) This section is a statute of repose and controls over
21 any other applicable limitations period.

22 SECTION 35. Chapter 2210, Insurance Code, is amended by
23 adding Subchapter L-1 to read as follows:

24 SUBCHAPTER L-1. CLAIMS: SETTLEMENT AND DISPUTE RESOLUTION

25 Sec. 2210.571. DEFINITIONS. In this subchapter:

26 (1) "Association policy" means a windstorm and hail
27 insurance policy issued by the association.

1 (2) "Causation dispute" means a dispute involving the
2 extent to which damage to property insured under an association
3 policy was caused by an event or peril covered under the policy.

4 (3) "Claim" means a request for payment under an
5 association policy. The term also includes any other claim against
6 the association, or an agent or representative of the association,
7 relating to an insured loss, under any theory or cause of action of
8 any kind, regardless of the theory under which the claim is
9 asserted, the cause of action brought, or the type of damages
10 sought.

11 (4) "Claimant" means a person who makes a claim.

12 (5) "Coverage dispute" means a dispute that involves
13 whether, or the extent to which, an association policy covers
14 damages to property alleged to be insured under the policy. The
15 term does not include a causation dispute.

16 (6) "Damage dispute" means a dispute that involves the
17 extent of damage to property, or the cost of repairing or replacing
18 property, insured under an association policy. The term does not
19 include a causation dispute or coverage dispute.

20 Sec. 2210.572. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD.

21 (a) This subchapter provides the exclusive remedies for a claim
22 against the association, including an agent or representative of
23 the association.

24 (b) The association or an agent or representative of the
25 association may not be held liable for any amount on a claim other
26 than:

27 (1) amounts payable under the terms of the association

1 policy for loss to an insured structure, loss to contents of an
2 insured structure, and additional living expenses; and

3 (2) any costs and fees awarded under Section 2210.578.

4 (c) The association or an agent or representative of the
5 association may not be held liable for damages under Chapter 17,
6 Business & Commerce Code, or under any provision of any law
7 providing for trebling of damages or a penalty.

8 Sec. 2210.573. FILING OF CLAIM; CLAIM PROCESSING. (a)

9 Subject to Section 2210.205(b), an insured must file a claim under
10 an association policy not later than the first anniversary of the
11 date on which the damage to property that is the basis of the claim
12 occurs.

13 (b) Except as provided by Subsection (d), not later than the
14 90th day after the date the association receives a claim, the
15 association shall:

16 (1) notify the claimant in writing of the amount of
17 money, if any, the association will pay the claimant for the claim;
18 and

19 (2) provide the claimant with:

20 (A) a detailed description of the assumptions or
21 estimates used by the association in determining the amount of the
22 claim to be paid, including the estimated labor and materials
23 required and the estimated prices for the labor and materials; or

24 (B) if the association determines that, in whole
25 or in part, the property damaged is not insured under the
26 association policy, or that the property insured under the
27 association policy was damaged by an event or peril not covered by

1 the association policy, a detailed description of the factual and
2 legal basis on which the association determined that a coverage or
3 causation dispute exists concerning all or part of the claim.

4 (c) If the association does not notify the claimant within
5 the period required by Subsection (b), the claim is presumed to be
6 covered by the association policy.

7 (d) The association may extend the 90-day period described
8 by Subsection (b) for a period not to exceed 90 days, if, before the
9 end of the 90-day period described by Subsection (b), the
10 association determines that special circumstances require an
11 extension of the 90-day period described by Subsection (b) and
12 notifies the claimant in writing of that determination and those
13 circumstances.

14 (e) If a claimant fails to submit information necessary for
15 the association to determine whether to pay a claim or any portion
16 of a claim or to deny payment of a claim or any portion of a claim,
17 the association shall, not later than the 15th day after the date
18 the association receives notice of the claim, request in writing
19 any necessary information from the claimant. For good cause, the
20 association may make a request for additional information under
21 this subsection not later than the 30th day after the date the
22 association receives notice of a claim. If the association makes a
23 written request for information, the applicable period described by
24 Subsection (b) or (d) is tolled from the date the association
25 requests the information until the date the association receives
26 from the claimant information responsive to the request.

27 (f) In addition to the notice and information otherwise

1 required under this section, the association shall notify a
2 claimant of the time limits under Section 2210.574 to request
3 review of the association's determination under Subsection (e).

4 Sec. 2210.574. REQUEST FOR REVIEW OF ASSOCIATION
5 DETERMINATION. (a) A claimant aggrieved by a determination of the
6 association under Section 2210.573 may, not later than the 30th day
7 after the date the claimant receives the association's
8 determination, request in writing a review of the determination. A
9 claimant may submit written comments, documents, records, and other
10 information to the association with or following the request for
11 review.

12 (b) The association shall, on request and free of charge,
13 provide a claimant requesting review of an association
14 determination under Subsection (a) reasonable access to all
15 information relevant to the determination of the association that
16 is being reviewed. The claimant may copy the information at the
17 claimant's own cost or may request the association to provide a copy
18 of all or part of the information to the claimant. The association
19 may charge a claimant the actual cost incurred by the association in
20 providing a copy of information under this section, excluding any
21 amount for labor involved in making any information or copy of
22 information available to a claimant.

23 (c) Not later than the 60th day after the date the
24 association receives a request for review under Subsection (a), the
25 association shall notify the claimant in writing of the outcome of
26 the association's review. The association and the claimant may
27 agree to extend the 60-day period described by this subsection.

1 (d) The association's notice to the claimant of the outcome
2 of the association's review must be in writing, contain the reasons
3 for the outcome, and notify the claimant of the time limits to
4 request, as applicable, appraisal under Section 2210.575 or review
5 by an independent review panel under Section 2210.576.

6 Sec. 2210.575. APPRAISAL IN DAMAGE DISPUTES. (a) If, after
7 review of an association determination under Section 2210.574, a
8 damage dispute exists with reference to a claim filed under an
9 association policy, but a coverage or causation dispute does not
10 exist with reference to that claim, the claimant may request
11 appraisal of the extent of damage to the property, or the cost of
12 repairing or replacing the property, insured under the policy.

13 (b) A claimant must make a written request for appraisal not
14 later than the 30th day after the date the claimant receives actual
15 or constructive notice of the outcome of the association's review
16 of a determination under Section 2210.574 that is the basis of the
17 damage dispute. If a claimant, on a showing of good cause and not
18 later than the 60th day after the expiration of the 30-day period
19 described by this subsection, requests in writing that the 30-day
20 period to request appraisal be extended, the commissioner may grant
21 an additional 30-day period in which the claimant may request
22 appraisal.

23 (c) If a claimant requests appraisal under Subsection (b),
24 the claimant and the association shall resolve the damage dispute
25 through appraisal, in accordance with the terms of the association
26 policy. The results of the appraisal:

27 (1) are binding on the claimant and the association

1 and are subject to appeal and judicial review only in the manner
2 provided by Section 2210.578; and

3 (2) become final and appealable on the 15th day after
4 the date the appealing party receives actual or constructive notice
5 of the results.

6 (d) A request for appraisal, and participation in the
7 appraisal process, under this section is a condition precedent to
8 contesting a determination made by the association concerning the
9 extent of damage to property, or the cost of repairing or replacing
10 property, insured under an association policy. A claimant who does
11 not request appraisal within the applicable period described by
12 Subsection (b) waives the claimant's right to contest a
13 determination of the association concerning the extent of damage to
14 property, or the cost of repairing or replacing property, insured
15 under an association policy.

16 (e) If a claimant requests appraisal under this section, the
17 claimant is responsible for paying any costs incurred or charged by
18 an appraiser retained by and on behalf of the claimant, the
19 association is responsible for paying any costs incurred or charged
20 by an appraiser retained by and on behalf of the association, and
21 the claimant and the association are responsible in equal shares
22 for any costs incurred or charged by any other appraiser chosen by
23 the claimant's and the association's appraisers to participate in
24 the resolution of the dispute.

25 (f) The commissioner by rule shall establish policies and
26 procedures for an appraisal requested and conducted under this
27 section.

1 Sec. 2210.576. REVIEW BY INDEPENDENT REVIEW PANEL. (a) If,
2 after review of an association determination under Section
3 2210.574, a coverage or causation dispute exists with reference to
4 a claim filed under an association policy, the claimant may seek
5 resolution of all disputes concerning the claim, including a damage
6 dispute, through review by an independent review panel.

7 (b) A claimant must make a written request, mailed or served
8 on the association or the commissioner, for review by an
9 independent review panel not later than the 30th day after the date
10 the claimant receives actual or constructive notice of the outcome
11 of the association's review of a determination under Section
12 2210.574 that is the basis of the causation, coverage, or damage
13 dispute. If a claimant mails or serves a request for review by an
14 independent review panel, the association shall immediately
15 forward the request for review to the commissioner.

16 (c) If a claimant, on a showing of good cause and not later
17 than the 60th day after the expiration of the 30-day period
18 described by Subsection (b), requests in writing that the 30-day
19 period to request review by an independent review panel be
20 extended, the commissioner may grant an additional 30-day period in
21 which the claimant may request independent review under this
22 section.

23 (d) The commissioner shall appoint an independent review
24 panel to resolve a dispute in the manner described by this section.
25 A panel appointed under this section must consist of three members,
26 selected by the commissioner from a roster of qualified panel
27 members maintained and published by the commissioner. If a

1 selected panel member cannot serve or declines to serve for any
2 reason, the commissioner shall select a new panel member not later
3 than the 10th day after the date the panel member notifies the
4 commissioner of the member's inability or unwillingness to serve.
5 The commissioner shall appoint one member of the panel to serve as
6 the presiding officer of the panel.

7 (e) An independent review panel appointed under Subsection
8 (b) shall make a determination concerning, as applicable, the
9 causation, coverage, or damage dispute submitted to the panel for
10 review and notify the claimant and the association in writing of the
11 panel's determination as soon as practicable, but not later than
12 the 120th day after the date the independent review panel is
13 appointed. If the independent review panel does not make a
14 determination concerning a dispute before the 120th day, the
15 commissioner may grant a reasonable extension for the panel to make
16 a determination or dissolve the panel and appoint a new panel to
17 conduct the review.

18 (f) An independent review panel shall determine whether the
19 review of a dispute involves a technical issue requiring guidance
20 or information from the technical panel appointed under Section
21 2210.577. If the review of a dispute involves a technical issue, the
22 independent review panel shall request from the technical panel
23 guidance and any information relevant to the dispute.

24 (g) The 120-day period described by Subsection (e) is tolled
25 from the date the independent review panel requests guidance or
26 information from the technical panel through the date on which the
27 independent review panel receives the requested guidance or

1 information.

2 (h) The determination of an independent review panel:

3 (1) is binding on the claimant and the association and
4 is subject to appeal and judicial review only in the manner provided
5 by Section 2210.578; and

6 (2) becomes final and appealable on the 15th day after
7 the date the appealing party receives actual or constructive notice
8 of the determination.

9 (i) The commissioner by rule shall establish:

10 (1) the qualifications for members of the independent
11 review panel;

12 (2) procedures and deadlines to be used in independent
13 review;

14 (3) procedures and requirements relating to the
15 exchange of documents during the independent review process,
16 including the content of those documents; and

17 (4) procedures or requirements necessary for any other
18 matter regarding the handling of requests for review.

19 (j) The rules adopted by the commissioner under Subsection
20 (i) must ensure that the independent review process is fair to the
21 claimant and enables the claimant to participate in the independent
22 review process without engaging legal counsel.

23 Sec. 2210.577. TECHNICAL PANEL. (a) The commissioner
24 shall appoint a technical panel of experts to advise the
25 association concerning the extent to which damage to property
26 insured under an association policy was incurred as a result of
27 wind, waves, tidal surges, rising waters not caused by waves or

1 surges, and wind-driven rain associated with a storm. The panel
2 shall consist of a number of experts to be decided by the
3 commissioner. The commissioner shall appoint one member of the
4 panel to serve as the presiding officer of the panel.

5 (b) Members of the panel must have professional expertise
6 in, and be knowledgeable concerning, the geography and meteorology
7 of the Texas seacoast territory, as well as the scientific basis for
8 determining the extent to which damage to property is caused by
9 wind, waves, tidal surges, rising waters not caused by waves or
10 surges, and wind-driven rain associated with a storm.

11 (c) The panel shall meet at the request of the commissioner
12 or the call of the presiding officer of the panel.

13 (c-1) The commissioner shall adopt rules regarding notice
14 of panel meetings and the transparency of deliberations of the
15 technical panel.

16 (d) The panel shall investigate, collect, and evaluate the
17 information necessary to provide recommendations under Subsection
18 (e) and to provide guidance or other information requested by an
19 independent review panel under Section 2210.576.

20 (e) At the request of the commissioner, the technical panel
21 shall recommend to the commissioner methods for determining the
22 extent to which damage to property insured under an association
23 policy resulted from wind, waves, tidal surges, rising waters not
24 caused by waves or surges, and wind-driven rain associated with a
25 storm for geographic areas or regions designated by the
26 commissioner.

27 (f) After consideration of the recommendations made by the

1 panel under Subsection (e), the commissioner shall publish
2 guidelines that the association will use to settle claims.

3 (g) A member of the technical panel is not individually
4 liable for an act or failure to act in the performance of the
5 official duties in connection with the individual's work on the
6 panel.

7 Sec. 2210.578. JUDICIAL REVIEW. (a) A claimant who has
8 exhausted all administrative remedies under this subchapter and who
9 is aggrieved by an appraisal under Section 2210.575 or the
10 determination of an independent review panel under Section 2210.576
11 is entitled to judicial review. A claimant may not seek judicial
12 review before exhausting all administrative remedies under this
13 subchapter.

14 (b) A claimant may seek judicial review of an appraisal
15 under Section 2210.575 or the determination of an independent
16 review panel under Section 2210.576 in the manner provided for the
17 appeal of contested cases under Subchapter G, Chapter 2001,
18 Government Code. The standard for judicial review under this
19 section is the substantial evidence rule.

20 (c) In a proceeding for judicial review under this section,
21 the court may award only the amount described by Section
22 2210.572(b), plus court costs and reasonable and necessary
23 attorney's fees.

24 (d) Notwithstanding Subsection (b), a claimant aggrieved by
25 an appraisal process under Section 2210.575 or the determination of
26 an independent review panel under Section 2210.576 may appeal to a
27 district court in the county in which the loss that, as applicable,

1 is the subject of the appraisal or independent review occurred, for
2 a determination concerning:

3 (1) the amount of the loss;

4 (2) whether the loss is covered by or insured under the
5 association policy;

6 (3) whether the loss was caused by a hazard or risk
7 insured under the policy; and

8 (4) the amount of court costs and reasonable and
9 necessary attorney's fees.

10 (e) An appeal to a district court under Subsection (d) shall
11 be trial de novo. The only questions that may be presented and
12 determined at the trial de novo are:

13 (1) the amount of the loss;

14 (2) whether the loss is covered by or insured under the
15 association policy;

16 (3) whether the loss was caused by a hazard or risk
17 insured under the policy; and

18 (4) the amount of court costs and reasonable and
19 necessary attorney's fees.

20 (f) The only evidence that may be admitted in a trial de novo
21 under Subsection (d) is evidence that was admitted or presented in
22 the appraisal process under Section 2210.575 or the independent
23 review process under Section 2210.576. The Texas Rules of Evidence
24 govern whether evidence presented during the appraisal process
25 under Section 2210.575 or the independent review process under
26 Section 2210.576 is admissible in a trial de novo under Subsection
27 (d).

1 (g) A petition for trial de novo under Subsection (d) must
2 be filed with a district court in the county in which the loss that,
3 as applicable, is the subject of the appraisal or independent
4 review occurred, not later than the 30th day after the date on which
5 the determination being appealed is final and appealable under this
6 subchapter.

7 (h) The appeal seeking a trial de novo under Subsection (d)
8 shall be presided over by a judge appointed by the judicial panel on
9 multidistrict litigation designated under Section 74.161,
10 Government Code. A judge appointed under this section must be a
11 resident of a first tier coastal county or a second tier coastal
12 county.

13 (i) The Texas Supreme Court shall adopt rules governing the
14 proceedings of a trial de novo under Subsection (d).

15 Sec. 2210.579. CONSTRUCTION WITH OTHER LAW. To the extent
16 of any conflict between a provision of this subchapter and any other
17 law, the provision of this subchapter prevails.

18 Sec. 2210.580. MEDIATION; CERTAIN DEADLINES TOLLED. A
19 deadline imposed on a claimant under Section 2210.574, 2210.575, or
20 2210.576 is tolled for a single period not to exceed 45 consecutive
21 days during which the claimant is actively seeking resolution of
22 the causation dispute, coverage dispute, or damage dispute through
23 a mediation administered by the department.

24 SECTION 36. Section 2210.602(2), Insurance Code, is amended
25 to read as follows:

26 (2) "Class 1 public securities" means public
27 securities authorized to be issued before, on, or after an

1 occurrence or series of occurrences by Section 2210.072, including
2 a commercial paper program authorized before the occurrence of a
3 catastrophic event but in which [~~so long as~~] no tranche of
4 commercial paper is issued under the program until after the
5 catastrophic event.

6 SECTION 37. Section 2210.604, Insurance Code, is amended by
7 amending Subsection (a) and adding Subsection (a-1) to read as
8 follows:

9 (a) At the request of the association and with the approval
10 of the commissioner, the Texas Public Finance Authority shall issue
11 Class 1, Class 2, or Class 3 public securities. The association
12 shall submit to the commissioner a cost-benefit analysis of various
13 financing methods and funding structures when requesting the
14 issuance of public securities under this subsection.

15 (a-1) The association and the commissioner must approve
16 each tranche of commercial paper issued under a commercial paper
17 program established under this chapter.

18 SECTION 38. Section 2210.609(b), Insurance Code, is amended
19 to read as follows:

20 (b) The board shall notify the association of the amount of
21 the public security obligations and the estimated amount of public
22 security administrative expenses, if any, each calendar year in a
23 period sufficient, as determined by the association, to permit the
24 association to determine the availability of funds and assess a
25 premium surcharge if necessary.

26 SECTION 39. Section 2210.611, Insurance Code, is amended to
27 read as follows:

1 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT
2 EARNINGS. Revenue collected in any calendar year from a premium
3 surcharge under Section 2210.613 that exceeds the amount of the
4 public security obligations and public security administrative
5 expenses payable in that calendar year and interest earned on the
6 public security obligation fund may, in the discretion of the
7 association, be:

8 (1) used to pay public security obligations payable in
9 the subsequent calendar year, offsetting the amount of the premium
10 surcharge that would otherwise be required to be levied for the year
11 under this subchapter;

12 (2) used to redeem or purchase outstanding public
13 securities; or

14 (3) deposited in the catastrophe reserve trust fund.

15 SECTION 40. Section 2210.612(b), Insurance Code, is amended
16 to read as follows:

17 (b) The association may enter financing arrangements as
18 described by Section 2210.072(d) as necessary to obtain public
19 securities issued under that section. Nothing in this subsection
20 prevents [~~shall prevent~~] the authorization and creation of one or
21 more programs for the issuance of commercial paper before the date
22 of an occurrence that results in insured losses under Section
23 2210.072(a) but in which [~~so long as~~] no tranche of commercial paper
24 is issued under a commercial paper program until after such an
25 occurrence.

26 SECTION 41. Section 2210.613, Insurance Code, is amended to
27 read as follows:

1 Sec. 2210.613. PAYMENT OF CLASS 2 PUBLIC SECURITIES. (a)

2 The association shall pay Class 2 public securities issued under
3 Section 2210.073 as provided by this section. Thirty percent of the
4 cost of the public securities shall be paid through member
5 assessments as provided by this section. The association shall
6 notify each member of the association of the amount of the member's
7 assessment under this section. The proportion of the losses
8 allocable to each insurer under this section shall be determined in
9 the manner used to determine each insurer's participation in the
10 association for the year under Section 2210.052. A member of the
11 association:

12 (1) may not recoup an assessment paid under this
13 subsection through a premium surcharge or tax credit; and

14 (2) notwithstanding Section 2210.073(a), may elect to
15 pay an assessment under this subsection in a lump sum.

16 (b) Seventy percent of the cost of the public securities
17 shall be paid by a [~~nonrefundable~~] premium surcharge collected
18 under this section in an amount set by the commissioner. On
19 approval by the commissioner, each insurer, the association, and
20 the Texas FAIR Plan Association shall assess, as provided by this
21 section, a premium surcharge to each policyholder of a policy that
22 is in effect on or after the 180th day after the date the
23 commissioner issues notice of the approval of the public securities
24 [~~its policyholders as provided by this section~~]. The premium
25 surcharge must be set in an amount sufficient to pay, for the
26 duration of the issued public securities, all debt service not
27 already covered by available funds and all related expenses on the

1 public securities.

2 (c) The premium surcharge under Subsection (b) shall be
 3 assessed on all policyholders of policies that cover [~~who reside or~~
 4 ~~have operations in, or whose~~] insured property that is located in a
 5 catastrophe area, including automobiles principally garaged in a
 6 catastrophe area. The premium surcharge shall be assessed on [~~for~~]
 7 each Texas windstorm and hail insurance policy and each property
 8 and casualty insurance policy, including an automobile insurance
 9 policy, issued for automobiles and other property located in the
 10 catastrophe area. A premium surcharge under Subsection (b) applies
 11 to:

12 (1) all policies written under the following lines of
 13 insurance:

14 (A) fire and allied lines;

15 (B) farm and ranch owners;

16 (C) residential property insurance;

17 (D) private passenger automobile liability and
 18 physical damage insurance; and

19 (E) commercial passenger automobile liability
 20 and physical damage insurance; and

21 (2) the property insurance portion of a commercial
 22 multiple peril insurance [~~that provide coverage on any premises,~~
 23 ~~locations, operations, or property located in the area described by~~
 24 ~~this subsection for all property and casualty lines of insurance,~~
 25 ~~other than federal flood insurance, workers' compensation~~
 26 ~~insurance, accident and health insurance, and medical malpractice~~
 27 ~~insurance]~~.

1 (d) A premium surcharge under Subsection (b) is a separate
2 [~~nonrefundable~~] charge in addition to the premiums collected and is
3 not subject to premium tax or commissions. Failure by a
4 policyholder to pay the surcharge constitutes failure to pay
5 premium for purposes of policy cancellation.

6 SECTION 42. Sections 2210.6135(a) and (c), Insurance Code,
7 are amended to read as follows:

8 (a) The association shall pay Class 3 public securities
9 issued under Section 2210.074 as provided by this section through
10 member assessments. The association, for the payment of the
11 losses, shall assess the members of the association an amount not to
12 exceed \$500 million per catastrophe year [~~for the payment of the~~
13 ~~losses~~]. The association shall notify each member of the
14 association of the amount of the member's assessment under this
15 section.

16 (c) A member of the association:

17 (1) may not recoup an assessment paid under this
18 section through a premium surcharge or tax credit; and

19 (2) notwithstanding Section 2210.074(a), may elect to
20 pay an assessment under this section in a lump sum.

21 SECTION 43. Section 2210.551(e), Insurance Code, is
22 repealed.

23 SECTION 44. (a) A legislative interim study committee
24 shall conduct a study of alternative ways to provide insurance to
25 the seacoast territory of this state through a quasi-governmental
26 entity.

27 (b) The committee is composed of nine members appointed as

1 follows:

2 (1) three members of the senate appointed by the
3 lieutenant governor;

4 (2) three members of the house of representatives
5 appointed by the speaker of the house of representatives; and

6 (3) three public members with a background in
7 actuarial science or insurance appointed as follows:

8 (A) one by the governor;

9 (B) one by the lieutenant governor; and

10 (C) one by the speaker of the house of
11 representatives.

12 (c) The speaker of the house of representatives and the
13 lieutenant governor shall jointly designate a chair or,
14 alternatively, designate two co-chairs, from among the committee
15 membership.

16 (d) The committee shall:

17 (1) examine alternative ways to provide insurance to
18 the seacoast territory of this state through a quasi-governmental
19 entity;

20 (2) recommend:

21 (A) the appropriate scope of authority and
22 responsibility for the entity to provide insurance to the seacoast
23 territory of this state;

24 (B) an organizational structure to exercise
25 authority and responsibility over the provision of insurance to the
26 seacoast territory of this state;

27 (C) a timetable for implementation; and

1 (D) specific amendments to state laws and rules
2 that are necessary to implement the committee's recommendations
3 under this subdivision; and

4 (3) estimate funding requirements to implement the
5 recommendations.

6 (e) The committee may adopt rules necessary to conduct
7 business under and implement this section.

8 (f) Except as specifically provided by this section, the
9 committee may operate in the same manner as a joint committee of the
10 82nd Legislature.

11 (g) Not later than December 1, 2012, the committee shall
12 report to the governor and the legislature the recommendations made
13 under this section.

14 SECTION 45. (a) The name of the Texas Windstorm Insurance
15 Association is changed to the Texas Coastal Insurance Plan
16 Association.

17 (b) A reference in law to the Texas Windstorm Insurance
18 Association or the Texas Windstorm Insurance Association Act means
19 the Texas Coastal Insurance Plan Association or the Texas Coastal
20 Insurance Plan Act, respectively.

21 SECTION 46. (a) The adjuster advisory board established
22 under this section is composed of the following nine members
23 appointed by the commissioner:

- 24 (1) two public insurance adjusters;
25 (2) two members who represent the general public;
26 (3) two independent adjusters;
27 (4) one adjuster who represents a domestic insurer

1 authorized to engage in business in this state;

2 (5) one adjuster who represents a foreign insurer
3 authorized to engage in business in this state; and

4 (6) one representative of the Independent Insurance
5 Agents of Texas.

6 (b) A member who represents the general public may not be:

7 (1) an officer, director, or employee of:

8 (A) an adjuster or adjusting company;

9 (B) an insurance agent or agency;

10 (C) an insurance broker;

11 (D) an insurer; or

12 (E) any other business entity regulated by the
13 department;

14 (2) a person required to register as a lobbyist under
15 Chapter 305, Government Code; or

16 (3) a person related within the second degree of
17 affinity or consanguinity to a person described by Subdivision (1)
18 or (2).

19 (c) The advisory board shall make recommendations to the
20 commissioner regarding:

21 (1) matters related to the licensing, testing, and
22 continuing education of licensed adjusters;

23 (2) matters related to claims handling, catastrophic
24 loss preparedness, ethical guidelines, and other professionally
25 relevant issues; and

26 (3) any other matter the commissioner submits to the
27 advisory board for a recommendation.

1 (d) A member of the advisory board serves without
2 compensation. If authorized by the commissioner, a member is
3 entitled to reimbursement for reasonable expenses incurred in
4 attending meetings of the advisory board.

5 (e) The advisory board is subject to Chapter 2110,
6 Government Code.

7 SECTION 47. This Act applies only to a Texas windstorm and
8 hail insurance policy, and a claim or dispute arising under a Texas
9 windstorm and hail insurance policy, delivered, issued for
10 delivery, or renewed by the Texas Windstorm Insurance Association
11 on or after the 30th day after the effective date of this Act. A
12 Texas windstorm and hail insurance policy, and a claim or dispute
13 arising under a Texas windstorm and hail insurance policy,
14 delivered, issued for delivery, or renewed by the Texas Windstorm
15 Insurance Association before the 30th day after the effective date
16 of this Act, are governed by the law in effect immediately before
17 the effective date of this Act, and the former law is continued in
18 effect for that purpose.

19 SECTION 48. The Texas Windstorm Insurance Association shall
20 amend the association's plan of operation to conform to the changes
21 in law made by this Act not later than January 1, 2012.

22 SECTION 49. If any provision of this Act or its application
23 to any person or circumstance is held invalid, the invalidity does
24 not affect other provisions or applications of this Act that can be
25 given effect without the invalid provision or application, and to
26 this end the provisions of this Act are severable.

27 SECTION 50. This Act takes effect immediately if it

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1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect on the 91st day after the last day of
5 the legislative session.